HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

Writ Petition No.24562 of 1995

Between:

K. Seshagiri Rao … Petitioner

AND

Andhra Pradesh State Electricity Board,
represented by its Member Secretary,
Hyderabad and three others. … Respondents

:: O R D E R ::

Counsel for the petitioner : Sri Ganduri Nageswara Rao

Counsel for the respondents : Sri G. Vidyasagar

18th April, 2007

This is a petition for quashing order dated 22-3-1993, vide which Superintending Engineer, Operation, Andhra Pradesh State Electricity Board, Guntur (respondent No.3) dismissed the petitioner from service.

The Facts:

The petitioner joined service in the Andhra Pradesh State Electricity Board (for short, 'the Board') as Revenue Cashier in 1975. While he was working at Tenali, the petitioner collected the dues of electricity from the consumers, but did not deposit the same in the Board's account. On coming to know of this, the Disciplinary Authority placed him under suspension. Assistant Accounts Officer, Repalle, who conducted preliminary enquiry, submitted report with the finding

that the petitioner did not deposit the amounts collected from the consumers. Thereafter, a regular departmental enquiry was instituted against the petitioner on the following charges:

> "(a) Collected c.c. bills from the consumers and not accounted for to Board A/c. for Rs.3,892-05.
>
> (b) Irregular accounting of PRs. For Rs.46-60 for 4 services. The P.R. Nos. noted in the BCRCs pertains to other consumers.
>
> (c) Delay in accounting of amount collected and its remittances causing temporary misappropriation of Rs.249-40.
>
> (d) Collected c.c. bills from the consumers and not accounted for in Board's account of Rs.1,574/- Original PRs. issued to the consumers but duplicate PRs. utilised for other consumers without using double side carbons for 8 services for Rs.1574/-."

The Enquiry Officer submitted report dated 7-9-1991 with the finding that the charges of misappropriation of public funds have been proved against the petitioner. Respondent No.3 accepted the enquiry report and issued show cause notice dated 16-11-1991 to the petitioner proposing his dismissal from service. The latter submitted reply dated 19-12-1991 and pleaded for compassion by stating that he had temporarily utilised the money for the marriage of his daughter and deposited the entire amount in the month of March, 1991. Thereafter, the matter was referred to the Concurrence Committee, which ordered fresh enquiry in the matter. Assistant Accounts Officer-cum-Electricity Revenue Officer, Repalle, who was directed to conduct fresh enquiry, submitted report dated 9-7-1992 with the finding that the charges have been proved against the petitioner. This time, respondent No.3 issued notice dated 17-8-1992 and proposed de-ranking of the petitioner from seniority No.165 to 210 in the cadre of Revenue Cashier. The petitioner submitted reply dated 28-8-1992 and again pleaded for compassion. The Concurrence Committee did not approve the proposed punishment and opined that it was a fit case for imposing the extreme penalty of dismissal. On receipt of the opinion of

the Concurrence Committee, respondent No.3 issued fresh show cause notice dated 6-2-1993 to the petitioner and proposed his dismissal from service. The latter submitted reply and pleaded that the proposed punishment was arbitrary and unjustified. After considering the same, respondent No.3 passed order dated
22-3-1993, whereby he confirmed the proposed penalty. The appeal preferred by the petitioner against the order of punishment was dismissed by the Appellate Authority.

The petitioner has challenged the order of punishment mainly on the grounds of violation of the rules of natural justice and arbitrary exercise of power by respondent No.3. In the affidavit filed by him, the petitioner has pleaded that the order of dismissal from service is liable to be quashed because the finding of misappropriation recorded by the Enquiry Officer is not based on any evidence. He has further pleaded that the money collected from the consumers was utilised by him in connection with the marriage of his daughter and this aspect has been completely overlooked by the Disciplinary Authority. Another plea taken by the petitioner is that the recommendations made by the Enquiry Officer and the second show cause notice issued by respondent No.3 proposing to impose the punishment of de-ranking show that the misconduct committed by him was not considered serious enough warranting imposition of the extreme penalty of dismissal from service.

In the counter-affidavit filed on behalf of the respondents, it has been averred that the penalty of dismissal was imposed on the petitioner because he was found guilty of misappropriation of public funds.

Sri G. Nageswara Rao, learned counsel for the petitioner argued that the impugned order is liable to be quashed because the finding of guilty recorded by the Enquiry Officer is not based on a correct appreciation of the facts and evidence. Learned counsel submitted that the Disciplinary Authority was not sure of the gravity of misconduct

found proved against the petitioner and yet the extreme penalty of dismissal from service was imposed on him. He then argued that even though the petitioner may have been found guilty of temporary misappropriation of the amount collected from the consumers, the penalty of dismissal from service should be treated as unreasonable and wholly disproportionate to the misconduct found proved. Learned counsel emphasised that respondent No.3 had mechanically passed the order of dismissal without considering the past record of the petitioner and the fact that he had utilised the money for the marriage of his daughter.

Sri G. Vidyasagar argued that in exercise of the power conferred upon it under Article 226 of the Constitution of India, the High Court cannot sit in appeal over the discretion exercised by the employer to punish an employee, who is found guilty of misappropriation of public funds. Sri Vidyasagar emphasised that the current trend of judicial verdicts is that the court should be extremely loath to interfere with the punishment imposed on the employees found guilty of misconduct. He submitted that even temporary misappropriation of public funds must be viewed with grave concern and the court cannot substitute its own opinion for that of the Disciplinary Authority.

I have thoughtfully considered the entire matter. Although, in his affidavit, the petitioner has questioned the findings recorded by the Enquiry Officer, Sri G. Nageswara Rao did not make any argument on this score. Therefore, the only issue which requires determination by the Court is whether the discretion exercised by respondent No.3 to impose penalty of dismissal from service on the petitioner is vitiated by arbitrariness or it can be said that the punishment is shockingly disproportionate to the misconduct found proved.

The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued

where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **State of Orissa v. Bidyabhushan Mohapatra**[1], the Supreme Court considered whether the High Court can interfere with

the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[2], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the

decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[3], the Constitution Bench of the Supreme Court laid down the following proposition:

"High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[4], a three Judges Bench of

the Supreme Court referred to some of the earlier judgments and observed:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."
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> (emphasis supplied)

In **B.C. Chaturvedi v. Union of India**[5], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of

judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[6], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate

the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

The doctrine of proportionality was invoked by the Supreme Court in **Ranjit Thakur v. Union of India**[7] for quashing order of punishment. The proposition laid down in that case reads as under:

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. G.Ganayutham**[8] the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

> "(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.
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> (2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in

outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

In **Om Kumar v. Union of India**[9], the Supreme Court considered the applicability of the doctrine of 'proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra)**, B.C. Chaturvedi v. Union of India**[10] and held:

> "1) In this context, we shall only refer to these cases. In **Ranjit Thakur v. Union of India** this Court referred to

"proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi v. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal**[11], the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

"The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is

proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional." (underlining is mine)

In **Director General, RPF v. Ch. Sai Babu**[12], the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

The view expressed in the above noted cases has been reiterated in the recent judgments – **Hombe Gowda Educational Trust v. State of Karnataka**[13], **State of U.P. v. Sheo Shanker Lal Srivastava**[14] and **Commissioner of Police v. Syed Hussain**[15].

Reference in this connection also deserves to be made to the decisions of the Supreme Court in **State Bank of India v. Samrendra Kishore Endow**[16], **State of Uttar Pradesh v. Ashok Kumar Singh**[17], **State of Uttar Pradesh v. Nandkishore Shukla**[18], **State of Punjab v. Baxi Singh**[19], **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**[20], **Union of India v. J.R. Gheman**[21],

Secretary, A.P. SWRE I Society v. J. Prathap[22] wherein the Supreme Court disapproved invoking of the doctrine of proportionality by the High Courts.

Before adverting to the facts of the case in hand, I deem it proper to mention that till early 80's, the superior courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the petitioner to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premise that violation of the rules of natural justice is itself a prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the petitioner pleads and prima facie shows that his cause has been prejudiced. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi v. State of Orissa**[23], **R.C.Sharma v. Union of India**[24], **Sunil Kumar Banerjee v. State of West Bengal**[25], **K.N. Tripathi v. State Bank of India**[26], **Mumtaz Hussein Ansari v. State of U.P.**[27], **Kashinath Dikshita v. Union of India**[28], **Chandrama Tiwari v. Union of India**[29], **Managing Director, ECIL v. B. Karunakar**[30], **Krishanlal v. State of Jammu and Kashmir**[31], **State Bank of Patiala v. S.K. Sharma**[32], **S.K. Singh v. Central Bank of India**[33], **State of Uttar Pradesh v. Shatrughanlal**[34], **Food Corporation of India v. Padamkumar Bhuvan**[35], **State of Uttar Pradesh v. Harendra Arora**[36], **Oriental Insurance Company v. S. Balakrishnan**[37], **State of Uttar Pradesh v. Rameshchand**

Manglik[38], **Canara Bank v. Debasis Das**[39], **Indra Bhanu Gaur v. Committee, Management of M.M Degree College**[40], **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick**[41], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**[42], **Punjab National Bank v. Manjeet Singh**[43], **P.D. Agrawal v. State Bank of India**[44] and Civil Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

The petitioner has not disputed the fact that he had collected the dues of electricity etc. from the consumers and did not deposit the same in the Board's account. Therefore, the finding recorded by the enquiry officer that the charges levelled against the delinquent i.e. the petitioner have been proved cannot be termed as erroneous. In any case, this Court cannot, in exercise of the power vested in it under Article 226 of the Constitution, sit in appeal over the findings recorded by the enquiry officer, which were accepted by the Disciplinary Authority.

The penalty of dismissal imposed on the petitioner cannot be dubbed as arbitrary or shockingly disproportionate to the misconduct found proved because misappropriation of public money has always been treated as grave misconduct.

The petitioner's plea that he had utilised the money in connection with the marriage of his daughter and, therefore, extreme penalty of dismissal should not have been imposed on him, merits rejection because he did not even file reply to charge sheet dated 26-4-1991 and made an attempt to convince the Disciplinary Authority that the temporary misappropriation of funds was made under compelling circumstances. That was the first opportunity available to him to plead for compassion on the ground that he had temporarily misappropriated the amount under compelling circumstances. However, the fact of the

matter is that the petitioner did not avail that opportunity. Even during the enquiry, he did not adduce any evidence to prove that misappropriation of the fund was not intentional and that the family circumstances had forced him to do so. For the first time, he took this plea in reply to the show cause notice. This was clearly an afterthought. Therefore, I do not see any reason to interfere with the order of punishment on the spacious ground that the petitioner had misappropriated the Board's money without any oblique motive.

Equally meritless is the argument of the learned counsel that the issue of three notices by respondent No.3 should be treated sufficient for invalidation of the order of punishment. In this context, it is apposite to mention that the petitioner has neither pleaded nor any material has been placed before the Court to show that his cause was prejudiced on account of apparently contradictory show cause notices issued by respondent No.3.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP. No.30217 of 1995 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, C.J.

18th April, 2007.

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[1] AIR 1963 SC 779

[2] AIR 1963 SC 1723

[3] AIR 1965 SC 1103

[4] AIR 1975 SC 2151

[5] (1995) 6 SCC 749

[6] (1999) 1 SCC 759

[7] (1987) 4 SCC 611
[8] (1997) 7 SCC 463
[9] (2001) 2 SCC 386
[10] **(1995) 6 SCC 749**
[11] (2003) 3 SCC 605
[12] (2003) 4 SCC 331
[13] (2006) 1 SCC 430
[14] (2006) 3 SCC 276
[15] (2006) 3 SCC 173
[16] (1994) 2 SCC 537
[17] (1996) 1 SCC 302
[18] (1996) 3 SCC 750
[19] (1997) 6 SCC 381
[20] (1998) 9 SCC 416
[21] (1999) 6 SCC 403
[22] (2002) 10 SCC 430
[23] (1969) 3 SCC 392
[24] (1976) 3 SCC 574
[25] (1980) 3 SCC 304
[26] (1984) 1 SCC 43
[27] (1984) 3 SCC 295
[28] (1986) 3 SCC 229
[29] (1987) Suppl. SCC 518
[30] (1993) 4 SCC 727
[31] (1994) 4 SCC 422
[32] (1996) 3 SCC 364
[33] (1996) 6 SCC 415
[34] (1998) 6 SCC 651
[35] (1999) SCC (L&S) 620
[36] (2001) 6 SCC 392
[37] (2003) 11 SCC 734
[38] (2003) 3 SCC 443
[39] (2003) 4 SCC 557
[40] (2004) 1 SCC 281
[41] (2005) 2 SCC 237
[42] (2005) 3 SCC 409
[43] (2006) 8 SCC 647
[44] (2006) 8 SCC 776